



September 12, 2001

Mr. Brett Bray  
Division Director  
Motor Vehicle Division  
Texas Department of Transportation  
P.O. Box 2293  
Austin, Texas 78768

OR2001-4062

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151808.

The Texas Department of Transportation (the "department") received a request for "copies of the New Motor Vehicle Dealer's License applications, and all related correspondence and documents, of DDH Investments North Texas, Inc., making application for license for Saturn dealerships on Plano, Irving and Louisville [sic], and DDH Investments South Texas, Inc., making application for Saturn dealerships located on the Southwest Freeway, the Katy Freeway and the Gulf Freeway in Houston." The requestor also asks for "all of the information in the file on the means by which the Saturn dealerships will occupy their respective dealership premises, such as the terms of the lease for each of the dealerships' locations." You inform us that some of the responsive information will be released to the requestor, but claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. In addition, pursuant to section 552.305, you notified representatives of DDH Investments of North Texas, Inc., and DDH Investments of South Texas, Inc., (collectively "DDH"), of the request for their information and invited DDH to submit arguments to this office as to why the information at issue should not be released.<sup>1</sup> A representative of DDH timely responded to your notice. DDH contends that a portion of the information contained in the license applications are excepted from required public disclosure pursuant to sections 552.101 and 552.110 of the

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<sup>1</sup>See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

Government Code. We have considered the exceptions raised by all the parties and have reviewed the submitted information.

We first address the applicability of section 552.110 to the requested information. Section 552.110 protects: (1) trade secrets, and (2) commercial or financial information the disclosure of which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a), (b). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 at 2 (1990). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).<sup>2</sup> This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). The commercial or financial branch of section 552.110 requires the business enterprise whose information is at issue to make a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. *See* Open Records Decision No. 661 (1999).

After reviewing the information at issue and the arguments set forth by DDH, we conclude that DDH has demonstrated how release of the information it describes as "pro forma balance sheets" and "buyout estimates" would cause substantial competitive harm to DDH. Therefore, the "buyout estimates," which you have marked with blue tags in the submitted materials, must be withheld from disclosure under section 552.110(b). In addition, we have marked with green tags the "pro forma balance sheets" that must be withheld from the submitted materials under section 552.110(b).

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<sup>2</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

With regard to the remainder of the submitted information, we note that the requestor specifically excludes from his request "information related to the driver's license number, social security number, personal financial information, dealer plate numbers, telephone number verification information or copies of checks which may be contained in or with any of the applications." Therefore, as this information is not responsive to the request, the department should redact any driver's license numbers, social security numbers, dealer plate numbers and telephone number verification information or copies of checks from the requested materials prior to release. In this regard, however, we note that while the requestor does not seek driver's license numbers, the submitted materials include photocopies of individuals' driver's licenses. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must therefore withhold the photocopies of the Texas driver's licenses in their entirety under section 552.130.

We also note that in addition to social security numbers, the submitted materials include an application for a social security card. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number application form is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the application form, you should ensure that this information was not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

There are also employee W-2 forms in the submitted materials. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. Attorney General Opinion H-1274

(1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Therefore, we find that you must withhold the W-2 forms from disclosure under section 552.101 as information deemed confidential by federal statute.

Section 552.101 also protects information made confidential by common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is protected by common law privacy, *see* Open Records Decision Nos. 600 (1992), 545 (1990). Although the requestor has specifically excluded personal financial information from his request, we do not find any personal financial information in the submitted materials. Furthermore, we find that the requested lease agreements, in this instance, may not be withheld under section 552.101 on the basis of common law privacy as they do not reflect personal financial decisions of individuals such as sole proprietors. *See* Open Records Decision No. 620 (1993) (a corporation has no common law privacy interest in its financial information).

To summarize, the "buyout estimates," which you have marked with blue tags in the submitted materials, and the "pro forma balance sheets," which we have marked with green tags, must be withheld from disclosure under section 552.110(b). Texas driver's licenses must be withheld in their entirety under section 552.130. The social security number application form must be withheld if it was obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. The W-2 forms are excepted from disclosure under section 552.101. Driver's license numbers, social security numbers, dealer plate numbers, telephone number verification information and any copies of checks from the requested materials should be redacted as not responsive to the request. The remainder of the responsive information, including the submitted lease agreements, must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 151808

Enc. Submitted documents

c: Mr. William R. Crocker  
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(w/o enclosures)